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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
SHERMAN GOTTLIEB, : 04-CV-4202 (ILG) (VVP)
Plaintiff, :
-against- :
CARNIVAL CORPORATION, :
Defendant. :
----- X

**DECLARATION OF ZACHARY W. SILVERMAN IN SUPPORT OF SHERMAN
GOTTLIEB'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY
OF FREDERICK STEIN FOR WHICH HE LACKS PERSONAL KNOWLEDGE**

I, ZACHARY W. SILVERMAN, declare under the penalty of perjury that:

1. I am an attorney duly admitted to practice in the state of New York and before the bar of this Court, and I am associated with the firm of Edwards Angell Palmer & Dodge LLP, which represents plaintiff Sherman Gottlieb. I submit this declaration in support of Mr. Gottlieb's Motion in Limine to Exclude the Testimony of Frederick Stein for Which He Lacks Personal Knowledge.

2. Annexed as **Exhibit A** is a true and correct copy of select excerpts from the deposition testimony of Frederick Stein, dated April 24, 2007.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 1, 2010



ZACHARY W. SILVERMAN

EXHIBIT A

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 SHERMAN GOTTLIEB,
5 Plaintiff,

04-CV-4202

6 -against- (ILG) (VVP)
7 CARNIVAL CORPORATION,
8 Defendant.

9
10

April 24, 2007

11 10:10 a.m.

12 30(b)(6) deposition of FREDERICK STEIN, taken
13 by Plaintiff, pursuant to Notice, at the offices of
14 Edwards Angell Palmer & Dodge, LLP, 750 Lexington
15 Avenue, New York, New York, before Nancy R.
16 Sullivan, a Shorthand Reporter and Notary Public.

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HUDSON REPORTING & VIDEO, INC.
124 West 30th Street, 2nd Fl.
New York, New York 10001
Tel: 212-273-9911 Fax: 212-273-9915

Page 6	Page 8
1 Stein	1 Stein
2 A. 1982 -- excuse me, 1986.	2 MR. SALTARELLI: I'm sorry, did you
3 Q. And your degree was?	3 say 2004 or 1994.
4 A. BSE of electrical engineering.	4 MR. CIZMARIK: I said 2004, which
5 Q. Did you attend any postgraduate	5 is wrong.
6 schools?	6 A. Yes, I heard 1994 in my head.
7 A. No, I did not.	7 Q. So why don't we clean up this
8 Q. How long have you been employed at	8 record that I muddled.
9 Carnival?	9 At some point in time in 1994 then,
10 A. It will be 15 years this November.	10 you left the info systems department and you
11 Q. So when did you first start working	11 joined the marketing department?
12 at Carnival?	12 A. Correct.
13 A. November 30, 1992.	13 Q. What position did you have in the
14 Q. When you started at Carnival, what	14 marketing department?
15 was your position there?	15 A. Marketing coordinator.
16 A. Inside sales representative.	16 Q. What were your responsibilities
17 Q. Now, what were your duties at the	17 there?
18 time of inside sales rep?	18 A. I would be responsible for running
19 A. Take calls from travel agents and	19 reports of travel agent production, for making
20 you work in tandem with what we call the	20 adjustments to travel agent commission levels,
21 business development manager or our field sales	21 that's the basics.
22 reps, and you try to assist the travel agent	22 Q. How long did you hold the position
23 with anything from ordering brochures to	23 of marketing coordinator?
24 resolving problems or issues that they would	24 A. I don't remember the exact timing
25 normally call upon their outside sales rep for.	25 because I never actually changed positions.

Page 7	Page 9
1 Stein	1 Stein
2 Q. And is the outside sales rep an	2 What happened is my role grew and I was given
3 employee of Carnival?	3 additional responsibilities over time and was
4 A. Yes.	4 then promoted to partnership marketing
5 Q. And how long did you hold the	5 supervisor, continuing to do the same duties
6 position as inside sales rep?	6 that I was doing but just adding on some
7 A. About a year and a half.	7 additional responsibilities.
8 Q. And so at some point in time in	8 Q. What were the additional
9 1994, you changed positions?	9 responsibilities that were added on?
10 A. That's correct.	10 A. Instead of just following
11 Q. And do you recall what position you	11 instructions to move a travel agent's commission
12 changed to?	12 from X to Y based on what my supervisor might
13 A. I initially changed to our info	13 have said, I was given the latitude to make
14 systems department. I honestly don't recall the	14 those judgments on my own and to update their
15 exact title, but I was essentially working to	15 commissions.
16 resolve cases that you would call the help desk	16 Q. And how long did you hold the
17 for with computer problems. And stayed there	17 position as partnership marketing supervisor?
18 for about six months.	18 A. I want to say it was about two
19 Q. And at some point in 2004, you	19 years, and then I was promoted to manager.
20 changed your position at Carnival?	20 Q. What year were you promoted to
21 A. Right.	21 manager?
22 Q. And what position did you attain	22 A. I don't recall exactly.
23 then?	23 Q. What department were you promoted
24 A. It was called marketing coordinator	24 to manager in?
25 and it was --	25 A. I have been in the same department

3 (Pages 6 to 9)

1 Stein
 2 the whole time.
 3 Q. Marketing department?
 4 A. Right.
 5 Q. How, if any, did your duties change
 6 when you became manager?
 7 A. My boss had taken on the overall
 8 responsibility for managing the commission
 9 levels of more agents than she had been
 10 previously and delegated that responsibility to
 11 me. I would have a section of agents that we
 12 call superagents that are our top agents, and we
 13 took on the role of negotiating their
 14 agreements, and I was delegated most of the
 15 responsibility.
 16 Q. How long did you hold the position
 17 as manager?
 18 A. That was approximately two years,
 19 and I was promoted to director again, staying
 20 within the same department.
 21 Q. Do you recall when you were
 22 promoted to director?
 23 A. I don't recall exactly, but it was
 24 in the neighborhood of five to six years ago.
 25 Q. Is that the position you currently

1 Stein
 2 We also track and report on the
 3 performance of our travel agents in terms of
 4 number of passengers or guests traveled. We
 5 track the performance of Carnival's field sales
 6 force and also establish their goals and monitor
 7 their achievement of their goals and process
 8 their incentives.
 9 Q. Does that about cover your
 10 responsibilities at present?
 11 A. Yes.
 12 Q. What is the role of the department
 13 of business development services?
 14 A. That is the new name for my
 15 original department which was called inside
 16 sales, and they worked with generally two or
 17 three of our business development managers,
 18 which are the name we give to our field sales
 19 force, and they, in tandem with their partner,
 20 call over the phone on the travel agents within
 21 their respective territories. They also answer
 22 incoming calls from travel agents and generally
 23 work with the BDM to develop and encourage
 24 additional sales from the travel agents.
 25 Q. Is that a group within the

1 Stein
 2 hold?
 3 A. Yes.
 4 Q. I understood based on interrogatory
 5 responses that you are the director in the
 6 department of agency compensation?
 7 A. Right.
 8 Q. Is the department of agency
 9 compensation a subgroup within the department of
 10 marketing?
 11 A. Yes, it is.
 12 Q. What are your duties as director of
 13 department of agency compensation?
 14 A. Oversee the commission levels of
 15 all of our domestic and -- well, North American
 16 travel agents, U.S. and Canada and negotiate
 17 their commission agreements.
 18 My group is also responsible for
 19 reimbursing cooperative advertising expenses
 20 where we jointly do marketing with travel
 21 agents. We are also responsible for maintaining
 22 the travel agent database which stores the
 23 travel agent's profile information, name,
 24 address, phone, fax number, et cetera, et
 25 cetera.

1 Stein
 2 department of marketing?
 3 A. No, it is not.
 4 Q. What is the role of the department
 5 of revenue management?
 6 A. They oversee the pricing of our
 7 voyages and they are tasked with managing the
 8 revenue and bringing in the highest possible
 9 revenue for each voyage.
 10 Q. Now, the department of revenue
 11 management was identified in Carnival's
 12 interrogatory responses as a department which
 13 sends faxes to travel agencies to promote
 14 special rate offers. Do you agree with that?
 15 A. Yes.
 16 Q. Are there any other departments at
 17 Carnival that send faxes to travel agencies to
 18 promote special rate offers?
 19 A. Not to specifically promote special
 20 rate offers, with the exception that on a very
 21 rare occasion, business development services
 22 might send a fax to promote a travel agent rate
 23 where we were offering a special specifically
 24 for the travel agent's use, not to sell to
 25 consumers.

<p style="text-align: right;">Page 42</p> <p>1 Stein 2 agent asking us to make those changes. 3 Q. But at some point in time, the 4 information from the Outlook program gets 5 downloaded into the mainframe? 6 A. It is keyed in manually. 7 Q. How often is that done, the keying 8 in, is it done on a daily basis? 9 A. Yes. 10 Q. Does everybody in the agency 11 profile desk have access to the Outlook program? 12 A. Yes. 13 Q. How many people are in the agency 14 profile desk group? 15 A. There are two people that is their 16 primary function. There is the manager of 17 agency compensation who also has access and 18 ability to make changes. 19 Q. Who is the manager? 20 A. That's Angela Morales. 21 Q. Who is the other individual? You 22 said there were two people? 23 A. Right, there is two people whose 24 main task is to make the update, there is 25 Bridget Warren and Dunia Gomez, recently</p>	<p style="text-align: right;">Page 44</p> <p>1 Stein 2 and you also check the mainframe? 3 A. Correct. 4 Q. Any other places that would have 5 been obvious places to look or are those the two 6 main places? 7 A. Those are the two main places. We 8 obviously also conferred with each of our 9 members of the team to make sure that they did 10 not have any recollection of any requests from 11 Mr. Gottlieb. 12 Q. When you say members of the team, 13 who are you referring to? 14 A. The agency profile desk. 15 Q. And the two people that are at the 16 agency profile desk are the manager of the 17 agency profile desk -- have they been 18 continuously employed by Carnival in that 19 position since March of 2001? 20 A. The manager has. The other two 21 individuals have not. 22 Q. And were there other individuals in 23 that department from actually March of 1999 to 24 the present who are no longer in that department 25 now?</p>
<p style="text-align: right;">Page 43</p> <p>1 Stein 2 married, so if that name was given before, it 3 might be listed as Dunia Castro. The other 4 person is Bridgett Warren. 5 Q. Am I correct that Carnival 6 conducted a search for written communications 7 from Sherman Gottlieb regarding his request to 8 cease faxing, and you did not locate any 9 documents? 10 A. That is correct. 11 Q. Carnival is also not able to locate 12 any internal records regarding any oral 13 communications from Sherman Gottlieb regarding 14 his request to cease faxing? 15 A. That is also correct. 16 Q. Can you tell me in general terms 17 what Carnival did to search for any evidence of 18 written or oral requests from Sherman Gottlieb 19 to stop faxing? 20 A. We searched through our Outlook 21 program for any written requests that had been 22 received. Oral requests, had they been 23 received, would have been acted upon and entered 24 into the agency profile. 25 Q. So you checked the Outlook program,</p>	<p style="text-align: right;">Page 45</p> <p>1 Stein 2 A. Yes. 3 Q. And are they still employed by 4 Carnival? 5 A. No, they are not. 6 Q. Do you recall their names? 7 A. I do. 8 Q. And they are? 9 A. Diego Ramirez, Anita Abuafareh and 10 one more name, Thea Clinton. 11 Q. What's the last name? 12 A. G-l-i-n-t-o-n. 13 Q. When did Diego leave the employment 14 of Carnival? 15 A. I don't recall the specific date. 16 I actually made a note of that in case you asked 17 it, which I can help you if you like. 18 Q. We will leave a blank spot in the 19 record and when the witness has a chance to 20 review the transcript, he can fill it in. 21 A. _____ 22 Q. Do you recall when Anita left the 23 employment of Carnival? 24 A. I think the same. I do not recall 25 the exact date.</p>

12 (Pages 42 to 45)

1 Stein

2 Q. Let's leave a blank spot there as
3 well.

4 A.

5 Q. Do you recall when Thea left the
6 employment of Carnival?

7 A. That one was more recent, it was
8 August of 2006.

9 Q. And the two individuals at the
10 agency profile desk who are now responsible for,
11 among other things, keying in requests from
12 travel agents, when did they begin employment at
13 the agency profile desk?

14 A. Dunia Gomez began employment
15 approximately one year ago. Bridgett Warren, I
16 would have to look up the exact date.

17 Q. And an approximate date would be?

18 A. Sometime after 2003.

19 MR. CIZMARIK: Why don't we leave a
20 blank spot in the record to fill in the
21 exact date.

22 A.

23 Q. Carnival has indicated that it
24 believes it was authorized by Sherman Gottlieb
25 to send faxes to him. And I would like to know

1 Stein

2 what documents Carnival is relying on for that
3 proposition?

4 MR. SALTARELLI: Objection to the
5 form of the question.

6 A. Mr. Gottlieb, his travel agency
7 profile was created in March of 1999 at his
8 request. At that time he gave us his fax
9 number. At that time Carnival did not require
10 any written documentation from the travel agent
11 in order to begin doing business with them.

12 As soon as his profile was entered
13 into our computer system, we would have begun
14 sending promotion faxes. Since we have no
15 objection to him ever receiving those faxes, we
16 believe that we had his consent to do so.

17 Q. Just so I am clear, back in March
18 of 1999, it was Carnival's policy to not seek
19 affirmative consent from travel agents to send
20 promotional faxes, but rather it relied on its
21 travel agents' silence as implicit consent.

22 MR. SALTARELLI: Objection to the
23 form.

24 A. That would be an accurate way of
25 stating it.

1 Stein

2 Q. Are there any documents that were
3 sent to you by Mr. Gottlieb in March of 1999
4 that would suggest that he gave consent to
5 receive faxes?

6 A. None that we may have a record of.
7 There was a document that we would have sent him
8 on entry of his profile into our computer system
9 asking him to verify if the information was
10 correct, to notify us of any changes and also to
11 send back to us some additional documentation.

12 However, we did not have any
13 requirement to follow up and insure that we
14 received that documentation in order to continue
15 doing business with him.

16 Q. And any of that documentation from
17 the March 1999 time period would no longer be in
18 existence pursuant to Carnival's four-year
19 document -- pursuant to Carnival's document
20 retention policy which destroys documents older
21 than four years old?

22 A. Right. That policy was not in
23 place -- well, I would have to double-check when
24 the policy was in place. However, when the
25 lawsuit was initially filed, it was 2004, so we

1 Stein

2 are just about five years from events, so yes,
3 the records should have been destroyed at that
4 time.

5 Q. So going forward in time from the
6 March 1999 time period, are there any documents
7 which Carnival has in its possession which it is
8 relying on for the proposition that Sherman
9 Gottlieb authorized Carnival to send him
10 promotional faxes?

11 A. In February of 2004, subsequent to
12 his profile having been deactivated in our
13 system due to lack of activity, he requested
14 that his profile be reactivated, and at that
15 time he signed a document that does indicate
16 that he gave us authorization to send faxes.

17 Q. We will discuss that document in a
18 moment, but are you aware of any other documents
19 that Carnival is relying on other than that
20 February 2004 document for the proposition that
21 Sherman Gottlieb authorized Carnival to send
22 faxes to --

23 A. No other request documents.

24 MR. CIZMARIK: I am handing the
25 witness what's been marked as Plaintiff's